

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:

AVAYA INC., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 17-10089-smb

Jointly Administered

**STATEMENT OF ISSUES AND DESIGNATION OF RECORD ON APPEAL**

**STATEMENT OF ISSUES**

1. Whether the Bankruptcy Court erred in concluding that Marlene Clark's right to payment pursuant to Section 4.3 ("Survivor Benefit") of the Avaya Inc. Supplemental Pension Plan (the "Supplemental Plan") is not a death benefit under Bankruptcy Code section 1114(a), even though her right to said benefit was triggered by her husband's death.

2. Whether the Bankruptcy Court erred in concluding that the Supplemental Plan, to the extent that it provides the Survivor Benefit, is not a qualifying "plan, fund, or program" under section 1114(a).

3. Whether the Bankruptcy Court erred in concluding Appellant waived her argument that the Bankruptcy Court should look to 29 U.S.C. § 1002(1)-(3) in evaluating whether the Supplemental Plan, to the extent that it provides the Survivor Benefit, is an eligible "plan, fund, or program" under section 1114(a).

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of their federal tax ID number, are: Avaya Inc. (3430); Avaya CALA Inc. (9365); Avaya EMEA Ltd. (9361); Avaya Federal Solutions, Inc. (4392); Avaya Holdings Corp. (9726); Avaya Holdings LLC (6959); Avaya Holdings Two, LLC (3240); Avaya Integrated Cabinet Solutions Inc. (9449); Avaya Management Services Inc. (9358); Avaya Services Inc. (9687); Avaya World Services Inc. (9364); Octel Communications LLC (5700); Sierra Asia Pacific Inc. (9362); Sierra Communication International LLC (9828); Technology Corporation of America, Inc. (9022); Ubiquity Software Corporation (6232); VPNet Technologies, Inc. (1193); and Zang, Inc. (7229). Their address is: 4655 Great America Parkway, Santa Clara, California 95054.

**DESIGNATION OF RECORD ON APPEAL**

| <b>ECF No.</b> | <b>Date Filed</b> | <b>Item</b>   |
|----------------|-------------------|---|
| 22             | January 19, 2017  | Declaration of Eric Koza (I) in Support of First Day Motions and (II) Pursuant to Local Bankruptcy Rule 1007-2  |
| 337            | March 30, 2017    | Debtor Avaya Inc.'s Schedules of Assets and Liabilities (Case No. 17-10089)   |
| 522            | May 5, 2017       | Notice of Marlene Clark's Motion for Order Determining Survivorship Benefits under Supplemental Plan are "Retiree Benefits" under Bankruptcy Code Section 1114(a), Compelling Compliance with Section 1114(e), and Appointing an Official Committee under Section 1114(d)   |
| 590            | May 16, 2017      | Notice of Filing of Amendments to Certain of the Debtor's Schedules of Assets and Liabilities   |
| 609            | May 18, 2017      | Debtors' Objection to Marlene Clark's Motion for Order Compelling Compliance with 11 U.S.C. § 1114(e) and Appointing an Official Committee under 11 U.S.C. § 1114(d)  |
| 612            | May 18, 2017      | Objection of the Ad Hoc First Lien Group to Marlene Clark's Motion for Order Determining Survivorship Benefits under Supplemental Plan are "Retiree Benefits" under Bankruptcy Code Section 1114(a), Compelling Compliance with Section 1114(e), and Appointing an Official Committee under Section 1114(d)                   |
| 614            | May 18, 2017      | Objection of the Ad Hoc Crossover Group to Marlene Clark's Motion for Order Determining Survivorship Benefits under Supplemental Plan are "Retiree Benefits" under Bankruptcy Code Section 1114(a), Compelling Compliance with Section 1114(e), and Appointing an Official Committee under Section 1114(d)                    |
| 616            | May 18, 2017      | Objection of the Official Committee of Unsecured Creditors to Marlene Clark's Motion for Order Determining Survivorship Benefits under Supplemental Plan are "Retiree Benefits" under Bankruptcy Code Section 1114(a), Compelling Compliance with Section 1114(e), and Appointing an Official Committee under Section 1114(d) |

| ECF No. | Date Filed         | Item  |
|---------|--------------------|---|
| 635     | May 21, 2017       | Reply in Support of Marlene Clark's Motion for Order Determining Survivorship Benefits under Supplemental Plan are "Retiree Benefits" under Bankruptcy Code Section 1114(a), Compelling Compliance with Section 1114(e), and Appointing an Official Committee under Section 1114(d)                           |
| 641     | May 23, 2017       | Notice of Agenda for Hearing to be Held May 25, 2017, at 10:00 a.m. (Prevailing Eastern Time)   |
| 644     | May 23, 2017       | Amended Agenda for Hearing to be Held May 25, 2017, at 10:00 a.m. (Prevailing Eastern Time)   |
| 653     | May 24, 2017       | Debtors' Sur-Reply to Marlene Clark's Reply in Support of the Motion for Order Determining Survivorship Benefits under Supplemental Plan are "Retiree Benefits" under Bankruptcy Code Section 1114(a), Compelling Compliance with Section 1114(e), and Appointing an Official Committee under Section 1114(d) |
| 670     | May 24, 2017       | Letter Briefly Responding to Debtors' Sur-Reply   |
| N/A     | N/A                | Transcript of Hearing Held May 25, 2017   |
| 1182    | September 18, 2017 | Memorandum Decision Regarding Determination of Survivorship Benefits as "Retiree Benefits"  |
| 1201    | September 20, 2017 | Order   |
| 1202    | September 20, 2017 | Notice of Appeal  |

Dated: September 28, 2017  
New York, New York

STORCH AMINI PC

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